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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

PUBLIC COPY

[redacted]

FILE: [redacted] Office: SAN FRANCISCO, CA Date: APR 16 2003

IN RE: Applicant: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT: [redacted]

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, San Francisco, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Nicaragua who made a material and willful misrepresentation at the time of her non-immigrant visa interview. The record reflects that at the time she obtained her non-immigrant visa, the applicant failed to reveal that she had a fiancé in the United States whom she intended to marry. The district director found that "the applicant's willful misrepresentation of a material fact effectively shut off a line of inquiry that was pertinent to the applicant's eligibility for a visa" and that "had the true facts been known, the applicant's application for a visiting visa would have been denied." *See District Director Decision* at 2. The applicant was thus found to be inadmissible pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i). The applicant is married to a naturalized U.S. citizen and she is the beneficiary of an approved petition for alien relative. She seeks a waiver of her ground of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i).

In his decision, the district director noted the applicant's concern that, because her husband (Mr. [redacted] is a native of Mexico and citizen of the United States, he might not be allowed to work in Nicaragua. The decision also acknowledged that Mr. [redacted] might suffer emotional trauma if his wife were not allowed to remain in the United States (U.S.). The district director concluded, however, that a review of all of the evidence failed to establish that Mr. [redacted] would suffer extreme hardship if the applicant were removed from the U.S. *See District Director Decision*, dated September 19, 2002.

Through counsel, the applicant filed a notice of appeal on October 18, 2002. Counsel asserts that the Service (now the Bureau of Citizenship and Immigration Services) erred in finding that the applicant was an intending immigrant. Counsel asserts further that the applicant's husband would suffer extreme hardship if his wife were removed from the United States, in that, 1) he has diabetes and might not obtain medical treatment if he moved to Nicaragua; 2) he would be separated from his wife and daughter if he remained in the U.S.; 3) if he moved to Nicaragua he would have difficulty finding employment because he is not a native of the country; and 4) the family's standard of living would be lower in Nicaragua and it would be difficult to adjust to life there. The record contains no additional brief or evidence.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

> (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

In support of his determination that the applicant was an intending immigrant in violation of section 212(a)(6)(C) of the Act, the district director refers specifically to a sworn statement written and signed by the applicant on May 1, 2002, stating that she came to the U.S. to get married and stay. *See District Director Decision* at 2. The district director additionally refers to the applicant's failure to mention her U.S. citizen fiancé when applying for a non-immigrant visa, and to a written statement by Mr. [redacted] indicating that he proposed to his wife in Nicaragua in December of 2000, and that they planned for her to visit the U.S. so that they could get married. Counsel submitted no new evidence on appeal to contradict the bases of the district director's conclusions, and based on the evidence in the record, this office finds that the district director's determination of inadmissibility was correct.

Section 212(i) of the Act provides that:

> (1) The Attorney General may, in the discretion of the Attorney General, waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.
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> (2) No court shall have jurisdiction to review a decision or action of the Attorney General regarding a waiver under paragraph (1).

Section 212(i) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member.

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 568-69 (BIA 1999), the Board of Immigration Appeals (BIA) provided a list of factors it deemed relevant in determining whether an alien had established extreme hardship pursuant to

section 212(i) of the Act. The factors included the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate. *See Cervantes-Gonzalez* at 565-566.

In this case, the applicant's qualifying relative is her U.S. citizen husband. The record is silent regarding Mr. [redacted] family ties inside and outside of the United States. The record is also silent regarding how and where Mr. [redacted] and the applicant met, as well as his ties to Nicaragua. The record does indicate, however, that Mr. [redacted] is a native of Mexico and that he proposed to his wife while in Nicaragua in December 2000.

Counsel's assertion that Mr. [redacted] would suffer medical hardship if he relocated to Nicaragua is not persuasive. The evidence in the record fails to provide details regarding the type of diabetes Mr. [redacted] suffers from or the type of program or treatment that Kaiser Permanente Medical Center provides to him. *See Diabetes Care Manager Letter*, dated May 6, 2002. Moreover, the evidence indicates that Mr. [redacted] diabetes is controlled and that he is able to check his own blood sugars at home on a regular basis, and no evidence was submitted to support the claim that Mr. [redacted] might not be able to obtain medical care in Nicaragua. Additionally, Mr. [redacted] is the spouse of a Nicaraguan citizen whose native language is Spanish, and there is no evidence in the record to support the assertion that he would not be allowed to work in Nicaragua.

Counsel asserts that if Mr. [redacted] chose to remain in the United States, the separation from his wife and child would cause him to suffer extreme hardship. However, in *Matter of Pilch*, Interim Decision 3298, (BIA 1996), the Board of Immigration Appeals (BIA) held that emotional hardship caused by severing family and community ties is a common result of deportation. Moreover, in *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996) the Ninth Circuit Court of Appeals defined "extreme hardship" as hardship that is unusual or beyond that which would normally be expected upon deportation. The court stated further that the common results of deportation are insufficient to prove extreme hardship. Furthermore, the U.S. Supreme Court held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has failed to show that her U.S. citizen spouse would suffer extreme hardship over and above the normal economic and social disruptions involved in the removal of a family member. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.